

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROBERT TRAPP	:	Case No. 1:09CV763
	:	
Plaintiff,	:	(Judge Beckwith)
	:	
vs.	:	
	:	
TSS TECHNOLOGIES, INC.	:	DEFENDANTS' ANSWER TO
	:	<u>PLAINTIFF'S COMPLAINT</u>
Defendant.	:	
	:	

I. PRELIMINARY STATEMENT

1. Defendant admits that this is an action for age discrimination and denies any remaining allegations of this paragraph.

2. Defendant admits that this paragraph accurately describes what Plaintiff is seeking and denies any remaining allegations of this paragraph.

II. JURISDICTION AND VENUE

3. Denied.

4. Denied.

III. ADMINISTRATIVE HISTORY

5. Admitted.

6. Denied for lack of knowledge or information sufficient to form a belief.

7. Defendant admits that more than 60 days has elapsed since the charge was filed and denies any remaining allegations of this paragraph.

IV. PARTIES

8. Denied for lack of knowledge or information sufficient to form a belief.
9. Admitted.

V. STATEMENT OF THE CASE

10. Defendant admits that Plaintiff was hired in 1989 and that for most of his employment with Defendant he was a buyer/planner. Defendant denies the remaining allegations of this paragraph.

11. Denied.

12. Defendant admits that it hired two planner/ buyers in approximately February 2009 who were younger than Plaintiff. Defendant denies the remaining allegations of this paragraph.

13. Defendant admits that Plaintiff was terminated on or about April 16, 2009 during a meeting with his supervisor and a Human Resources representative without any prior warning that his termination was scheduled. Defendant denies the remaining allegations of this paragraph.

14. Denied.
15. Denied.
16. Denied.

VI. STATEMENT OF CLAIMS

Count I: Violation of the ADEA

17. Defendant incorporates by reference its responses to paragraphs 1- 16, above.
18. Denied.

Count II: Willful Violations of the ADEA

19. Defendant incorporates by reference its responses to paragraphs 1- 18, above.
20. Denied.

Count III: Violation of O.R.C. Sec. 3112 et seq.

21. Defendant incorporates by reference its responses to paragraphs 1- 20, above.
22. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The imposition of punitive damages in this case would contravene Defendant's rights under the Constitutions of Ohio and the United States and, regardless, Defendant has made good faith efforts to comply with the law thereby precluding recovery of such damages.

THIRD AFFIRMATIVE DEFENSE

All employment actions taken with respect to Plaintiff were done for legitimate, lawful, nondiscriminatory reasons.

FOURTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff failed to mitigate her damages, Plaintiff is precluded from recovery.

FIFTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff's age played any role in his treatment, which it did not and which Defendant expressly denies, Plaintiff would have been treated in the same fashion nonetheless.

Wherefore, having fully answered, Defendant demands that Plaintiff's Complaint be dismissed and that it be awarded its costs and attorneys fees associated with defending against Plaintiff's claims.

Respectfully submitted,

OF COUNSEL:

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing Answer of Defendant was filed using the Court's CM/ECF filing system and a copy of this Answer was served upon the following named individuals using the ECF system of the United States District Court on the 11th day of January 2010:

Marc D. Mezibov, Esq.
Susan M. Lawrence, Esq.
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/s/David K. Montgomery
David K. Montgomery